

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	:	FACTUAL BASIS
	:	
v.	:	
	:	
KENNETH W. WHITE	:	1:14CR39-5

NOW COMES the United States of America, by and through Ripley Rand, United States Attorney for the Middle District of North Carolina, and as a factual basis under Rule 11 of the Federal Rules of Criminal Procedure, states the following:

The United States Department of State is an agency within the executive branch of the government of the United States with the duty of regulating the issuance of passports and visas for entry into the United States including the issuance of H-2B Visas for the entry of temporary foreign workers into the United States.

Obstruction of the Lawful Function of the Department of State

Prior to January 2009, Consular Services, Inc., ("CSI") a worker processing company in Mexico controlled by Eury, Kenneth White and Harry Lee Wicker, and acting at their direction, required foreign workers to pay a processing fee in order for CSI to assist them with securing H-2A and H-2B employment in the United States. A portion of this fee was then transferred by CSI to accounts in the United States controlled by Eury, Wicker,

and White for their personal use and benefit. CSI refused to aid foreign workers to apply for their H-2A or H-2B visa already approved by the United States Government if they did not pay the entire worker processing fee a portion which was paid to Eury, Wicker and White.

Effective in January 2009, the United States Department of Homeland Security promulgated regulation 8 C.F.R. § 214.2(h)(6)(i)(B) and 20 C.F.R. §§ 655.135(j) and (k), which prohibited a facilitator, recruiter, or similar employment service from charging a fee from workers as a condition of the offer of obtaining H-2B or H-2A employment.

To avoid losing their lucrative per-worker fee due to the promulgation of new regulations barring the charging of worker fees as a condition of H-2A and H-2B employment, Eury, Wicker and White formed a corporation known as Application Services and Administrative Programs, LLC ("ASAP") to collect the fee from the employer clients of ILMC and a second immigration company controlled by Eury, Wicker and White known as The Labor Company ("TLC"). Eury, Wicker and White caused employer clients to be informed that the fee was for recruiting services in Mexico. In fact, the \$99.00 fee charged by ASAP included a mark-up for the benefit of Eury, Wicker and White.

In the same time period, Eury, Wicker and White directed ASAP to inform ILMC and TLC clients that their workers would be

cancelled and not allowed to "cross" into the United States if ASAP was not paid the \$99.00 per-worker fee. ASAP and CSI had no authority to prevent workers from entering the United States if so allowed under operation of the laws of the United States or to charge a fee to allow workers to participate in programs governed by the laws of the United States. Further, Eury and White instructed employees of ILMC to call ILMC clients and instruct them that their workers would be cancelled if the fee to ASAP was not promptly paid.

In particular, on or about February 5, 2009, Eury, Wicker and White directed ILMC and CSI to send a letter by United States Mail and email to all clients of ILMC informing the clients that their workers would be "cancelled or delayed" if the \$99 fee to ASAP was not timely paid. Further, Eury, Wicker and White, through ASAP, provided invoices to ILMC and TLC clients for the \$99.00 per-worker fee including the statement in bold print that "Immediate Payment is required to avoid cancellation of your workers."

For example, on or about March 16, 2011 such an invoice was sent by ASAP to TLC client, Pride of VA Bait & Oyster, Inc., threatening the cancellation of foreign workers for whom H-2B Visas had been approved by the United States thus impairing and interfering with the lawful function of the United States Department of State by requiring Pride of VA Bait and Oyster to

pay a fee, including a substantial amount benefitting Eury, Wicker and White to allow its workers to proceed to the consulate to make final application for H-2B visas for which the petitions had been approved.

This, the 23rd day of June, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2015, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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